

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

W. DALE FINKE, Director)
Department of Insurance, Financial)
Institutions and Professional Registration)
State of Missouri,)

Plaintiff,)

v.)

GERALD L. CUMMINGS,)

Defendant.)

FILED

MAR 23 2007

Case No. 06AC-CO-1084
BRENDA A. UMSTATTO
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Procedural Background

1. The director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter, "Director") issued a bail bond agent license to Respondent Gerald L. Cummings (hereinafter, "Cummings") on November 22, 1994. The license expired on November 22, 2005.

2. Cummings was indicted in Cass County, Missouri, for one count of possession of a controlled substance and two counts of carrying a concealed weapon, each committed on February 26, 2002.

3. On February 23, 2005, the Circuit Court of Cass County, Missouri, found Cummings guilty on Count I: a Class C felony of possession of a controlled substance, in violation of Section 195.202, RSMo (2000), and on Count II: a Class D felony of unlawful use of a weapon, in violation of Section 571.030.1(1), RSMo (2000). On April 18, 2005, the court suspended the imposition of sentence and placed Cummings on probation for five years on Counts I and II. The court records

submitted do not indicate whether the court's findings of guilt were after trial or after a plea of guilty or *nolo contendere*.

Findings of Fact

4. On July 6, 2006, the Administrative Hearing Commission conducted a hearing in the case of Director of Insurance vs. Gerald L. Cummings (Case No. 05-1686 DI).

5. On November 7, 2006, the Administrative Hearing Commission issued a decision in the aforementioned case, finding no cause to discipline the bail bond agent license of Gerald L. Cummings under Section 374.755.1(5) and (6), RSMo (2000) or Section 374.755.1(2), (5) or (6), RSMo.

6. On November 21, 2006, W. Dale Finke, Director of the Department of Insurance, Financial Institutions and Professional Registration, filed a Petition for Judicial Review.

Conclusions of Law

7. This Court has jurisdiction over this case pursuant to Sections 536.100 to 536.160, RSMo.

8. Pursuant to Section 536.140, RSMo, this Court is not bound by any determinations of the Administrative Hearing Commission that are a question of law.

9. Missouri courts have interpreted Section 1.170, RSMo, to apply to acts done or rights established in a proceeding prior to the repeal of a given statute, but retrospective application of statutes does not run afoul of Section 1.170 if such use is procedural and does not impair any substantive rights vested by a prior statute. See Darrah v. Foster, 355 S.W.2d 24 (Mo. 1962); Research Medical Center v. Peters, 631 S.W.2d 938 (Mo. App. W.D. 1982); and City of Kahoka v. Webber, 618 S.W.2d 267 (Mo. App. E.D. 1981).

10. Comerio v. Beatrice Foods Co., 595 F.Supp. 918, 920-21 (E.D. Mo. 1984), cited in the Administrative Hearing Commission's decision, can be distinguished on the grounds that to the extent the case referred to Section 1.170, it was in reference to 'acts done' pursuant to rights vested in a recently repealed statute.

11. Though not discussed in the Commission's decision, Article I, Sec. 13 of the Missouri Constitution, V.A.M.S., provides that no ex post facto law or law retrospective in its operation shall be enacted. However, Missouri courts have recognized, similar to their interpretation of Section 1.170, two exceptions to this constitutional provision: (1) where the legislature manifests a clear intent that it do so, and (2) where the statute is procedural only and does not affect any substantive right of the parties. See Clark v. Kansas City, St. Louis & Chicago Railroad Co., 118 S.W. 40 (1909); Darrah V. Foster, 355 S.W.2d 24 (Mo. 1962); and State ex rel. St. Louis-San Francisco Railway Co. v. Buder, 515 S.W.2d 409 (Mo. banc 1974).

12. A statute which does not take away or impair a 'vested right' or impose a new or greater duty is not unconstitutionally retrospective merely because it relates to prior facts or transactions. See Hoskins v. Box, 54 S.W.3d 736, 739 (Mo. App. W.D. 2001) and Bd. Of Registration for the Healing Arts v. Boston, 72 S.W.3d 260 (Mo. App. W.D. 2002).

13. Missouri courts have routinely held that licensing statutes confer no substantive rights and that professional licensing is a privilege granted by the state. See State ex rel. Schneider's Credit Jewelers, Inc. v. Brackman, 260 S.W.2d 800 (Mo. App. 1953); Barbieri v. Morris, 315 S.W.2d 711 (Mo. 1958); State Bd. of Registration for Healing Arts v. Giffen, 651 S.W.2d 475 (Mo. banc 1983); Brennecka v. Dir. Of Revenue, 855 S.W.2d 509 (Mo. App. W.D. 1993); and State Bd. of Registration for the Healing Arts v. Boston, 72 S.W.3d 260 (Mo. App. W.D. 2002).

14. Furthermore, it has been held that "(p)rotecting the public health and welfare is a primary purpose of professional licensing statutes." Lane v. State Comm. of Psychologists, 954 S.W.2d 23, 25 (Mo. App. E.D. 1997). While it is plain that a licensee has a property interest in his license to practice, so to does a licensing agency have a vital interest in safeguarding the public health and welfare. Larocca v. State Bd. Of Registration for Healing Arts, 897 S.W.2d 37, 42 (Mo. App. E.D. 1995).

15. A person who is statutorily deemed a menace or threat to the public is no less a menace or threat because some, if not all, of his convictions occurred before the effective date of a given statute. Barbieri v. Morris, 315 S.W.2d 711, 714 (Mo. 1958).

ORDER

The Administrative Hearing Commission decision issued in the case of Director of Insurance vs. Gerald L. Cummings (Case No. 05-1686 DI) is hereby REVERSED and cause exists to discipline the bail bond agent license of Gerald L. Cummings.

SO ORDERED.

3-23-07

Date


Honorable Judge Patricia Joyce

Cc: all parties

STATE OF MISSOURI } SS
COUNTY OF COLE

I, BRENDA A. UMSTATTD, Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of Findings of fact, conclusions of Law & order as fully as the same remains of record in my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 3 day of April 2007.
BRENDA A. UMSTATTD, Clerk


Deputy Clerk
Circuit Court of Cole County, Missouri